PT 07-11
Tax Type: Property Tax
Issue: Educational Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

	)	Docket Nos. 06-PT-0022
In re 2005	)	05-49-214
Property Tax Exemption Application of	)	PIN 06-36-409-003
PRAIRIE CROSSING CHARTER SCHOOL	)	John E. White,
	)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: James Magee, Magee, Negele & Associates, appeared for Prairie Crossing Charter School; Marc Muchin, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after Prairie Crossing Charter School (PCCS) protested the Illinois Department of Revenue's (Department) denial of its application for a non-homestead property tax exemption for 2005, for property situated in Lake County, Illinois, and on which PCCS operates its public, charter school. The issue is whether the property was subject to the exemption authorized by § 15-35 of the Illinois Property Tax Code (PTC), 35 **ILCS** 200/15-35.

The hearing was held at the Department's offices in Chicago. PCCS presented documentary evidence consisting of books and records and other documents, as well as the testimony of two witnesses. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the exemption be granted.

<u>Findings of Fact</u>:

1. PCCS is an Illinois not-for-profit corporation that operates a public, charter school for kindergarten through the seventh grades. Applicant Exhibits (Ex.) J (copy of Illinois State Board of Education Charter School Certificate); L (copy of Charter School Agreement, dated July 2, 1999), M (copy of Order of the State Board of Education, dated September 18, 2003, granting renewal of charter to PCCS), N (copy of Renewal of Charter and Charter School, dated May 26, 2004); *see also* 105 **ILCS** 5/1-3 ("public schools" means "any school operated by authority of [the School Code]."); 105 **ILCS** 5/27A-1 *et seq*. (Charter School Law part of the School Code).
2. PCCS's name was previously Prairie Commons Charter School. Applicant Exs. F (copy of Illinois Secretary of State certificates and forms bearing name of Prairie Commons Charter School), J.
3. Laura Fay (Fay) is the treasurer of PCCS's board of directors. Hearing Transcript (Tr.) p. 18 (Fay).
4. The Department has issued an exemption identification number to PCCS as an exclusively educational organization. Department Ex. 2 (copy of PCCS's completed form PTAX-300, Application for Non-Homestead Property Tax Exemption— County Board of Review Statement of Facts) (Part 2, line 9).
5. PCCS operates its public, charter school on the property, and the property is used exclusively for that purpose. Department Ex. 2; Applicant Exs. J, L, N.

6. In May 2004, PCCS's Board of Directors approved several contracts negotiated between PCCS and others. Those contract included:

- a purchase and sale agreement with Prairie Holdings Corporation (PHC) to purchase the property at issue, including an Option Agreement, a Declaration of Restrictive Covenants and a Reciprocal Easement Agreement (collectively with the Purchase Agreement, the Purchase Documents).
- a construction loan from Lake Forest Bank & Trust Company in the amount of $5,100,000 (the Loan).
- a construction contract between PCCS and Vacala Construction, Inc. dated January 22, 2004 (the Construction Contract) and other contracts, plans, permits, agreements and approvals related to the construction of the project described in the Construction Contract.

Applicant Ex. E, pp. 21-22, Ex. B (Resolution of the Board of Managers of PCCS Holdings, LLC (Resolution)).

7. In June 2004, PCCS formed PCCS Holdings, LLC (Holdings, or the LLC), an Illinois limited liability company. Applicant Ex. E. PCCS is Holdings' sole member. *Id*., p. 1.

8. Holdings holds title to the property at issue. Applicant Ex. B (copy of special warranty deed to property). PCCS is the applicant for the exemption. Department Ex. 2 (Part 1, line 4).

9. PCCS formed Holdings for the following purposes:

> *** to (i) own and develop the Project for use as a school; (ii) lease the Project to the Member or, if the Member is unable or unwilling to perform its lease obligations, to another tenant as determined by the Board; (iii) obtain the LFB [Lake Forest Bank] Financing and

> engage in any and all other financing transactions with the Board of Managers determines, subject to this Agreement, to be necessary or appropriate, including, without limitation, encumbering Company assets, and (iv) engage in any lawful activity for which limited liability companies may be organized under the Act.

Applicant Ex. E, Art. III.

10. Holdings is managed by a three member Board of Managers (the Board). Applicant Ex. E, § 8.1.

11. Robert Helle (Helle) is one of Holdings' managers. Applicant Ex. E, § 8.3(d); Tr. pp. 44-45 (Helle).

12. PCCS formed Holdings as a requirement of Lake Forest Bank & Trust Company, with whom PCCS negotiated the loans necessary to purchase and improve the property at issue pursuant to the Purchase Documents, the Loan, and the Construction Contract. Tr. pp. 46-47, 51 (Helle), 56-58 (Fay); Applicant Ex. E, Resolution.

13. For accounting and tax purposes, Holdings allocates all items of income, gain, loss, deduction or credit to its sole member, PCCS, subject to § 704(c) of the Internal Revenue Code (IRC). Applicant Ex. E, § 7.1.

14. For federal tax reporting purposes, PCCS treats Holdings as a disregarded entity on its Form 990, Return of Organization Exempt from Income Tax. Tr. pp. 21-23 (Fay); *see also* PCCS's 2005 Form 990 (Form 990), pp. 6 (Part IX entry referring to Statement 19), 38 (note for Statement 19 lists Holdings as the disregarded entity) (all page numbers cited in this recommendation for PCCS's Form 990 are taken from the portable document format file (commonly known as ".pdf") version of that form as viewed at http://foundationcenter.org/

findfunders/990finder/, which is one of the online, searchable databases for federal Form 990's) (last viewed on February 15, 2007); Applicant Ex. I (copy of 26 CFR § 301.7701-2 (2005) (Business entities – definitions); Tr. pp. 34-38 (no objection to request to take official notice of entries made on taxpayer's most recently filed, and publicly available, federal Form 990).

15. Because it treats Holdings as a disregarded entity for federal tax and accounting purposes, PCCS reports the school buildings and land as its (PCCS's) assets on its balance sheet and on its depreciation schedule. Form 990, pp. 3 (Part IV, line 57a, and note to see Statement 12), 31 (Statement 12), 18 (depreciation schedule attached as part of PCCS's Form 4562, Depreciation and Amortization, which is an attachment to its Form 990).

16. PCCS's fiscal year ends on June 30, and it sought an extension for filing its Form 990 to February 15, 2006 for its tax year ending in 2005. Form 990, pp. 1 (line A), 57 (extension application filed on November 15, 2005).

17. PCCS made a capital contribution to Holdings when forming it, which contribution is detailed in Exhibit B to Holdings' operating agreement, which exhibit consists of a copy of a Resolution of the Board of Managers of PCCS Holdings, LLC (Resolution). Applicant Ex. E, pp. 21-22, Ex. B (Resolution).

18. The Resolution provides:

> WHEREAS PCCS Holdings, LLC, an Illinois limited liability company (the "Company") proposes to enter into a series of transactions to acquire certain real estate located at 1571 Jones Point Road, Grayslake, Illinois (the "Property"), obtain a construction loan to construct certain improvements on the Property and to lease the Property to Prairie Crossing Charter School ("PCCS") (collectively, the "Transaction");
>
> WHEREAS the board of directors of PCCS (the "PCCS

Board"), the sole member of the Company, has approved the Transaction and the Transaction Documents (defined below);

WHEREAS the board of managers of the Company (the "Board") has determined that it is in the best interest of the Company to enter into the Transactions;

NOW THEREFORE, it is hereby resolved as follows:

1. Approval of Transactions. The Board hereby approves the Transactions and the Transaction Documents (as defined below) and resolves that the Company shall enter into the Transactions and Transaction Documents as more particularly described herein.

2. Purchase Agreement. The Company shall enter into a Purchase and Sale Agreement with Prairie Holdings Corporation ("PHC") to purchase the Property in substantially the form of the Purchase and Sale Agreement presented to the PCCS Board on May 18, 2004 (the "Purchase Agreement") and in connection therewith, enter into an Option Agreement, a Declaration of Restrictive Covenants and a Reciprocal Easement Agreement each in substantially the form presented to the PCCS Board on May 18, 2004 (collectively with the Purchase Agreement, the "Purchase Documents").

3. Construction Loan Documents. The Company shall obtain a construction loan from Lake Forest Bank & Trust Company in the amount of $5,100,000 pursuant to loan documents substantially in the form of the construction loan documents presented to the PCCS Board on May 18, 2004 (the "Loan Documents").

4. Assignment of Construction Documents. The Company shall accept an assignment from PCCS of the (a) construction contract between PCCS and Vacala Construction, Inc. dated January 22, 2004 (the "Construction Contract") and (b) all other contracts, plans, permits, agreements and approvals related to the construction of the project described in the Construction Contract (any documents and agreements evidencing such assignment being referred to as the "Assignment Documents").

5. Lease. The Company shall enter into a lease with PCCS for the use and occupancy by PCCS of the Property substantially in the form of the Lease presented to the PCCS Board on May 18, 2004 (the "Lease").

6. Execution of Transaction Documents and Ancillary. Each member of the Board is hereby authorized to execute and deliver on behalf of the Company the Assignment Documents and the Purchase Documents, the Loan Documents and the Lease (collectively, the "Transaction Documents") in substantially the form approved by the PCCS Board with such changes as the Board of Managers deems necessary or beneficial for the consummation of the Transaction. Each member of the Board of Managers is hereby further authorized to execute and deliver on behalf of the Company such other documents, certificates and agreements as are

reasonably necessary or appropriate to consummate the Transaction and which do not materially alter the terms of the Transaction Documents. In accordance with this Section 6, the signature of a single member of the Board shall bind the Company.

> 7. Supervision and Administration of Construction and Construction Loan Draws. Bob Helle is hereby authorized to (a) supervise and oversee construction of the improvements to the Property pursuant to the Construction Contract on behalf of the Company, (b) approve change orders to the extent required under the Construction Contract and permitted under the Loan Documents, (c) execute documents as necessary in connection with construction draws under the Loan Documents and (d) to take such actions as necessary or appropriate to accomplish the items described in clauses (a), (b) and (c) of this paragraph (collectively, the "Construction Administration Responsibilities").
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> 8. Ratification. Any actions taken by Bob Helle prior to the adoption of these resolutions in connection with the Transactions and the Construction Administration Responsibilities are hereby ratified and approved by the Board.
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> [signatures of Board Members]

Applicant Ex. E, Resolution.

19. Holdings' duration expires on December 31, 2050, unless dissolved earlier pursuant to its Operating Agreement. Applicant Ex. E, § 2.5.

20. Article X of Holdings' Operating Agreement provides:

> Section 10.1 Dissolution.
>
> (a) The Company shall be dissolved upon the occurrence of any of the following events:
>
> (i) The expiration of the period fixed for the duration of the Company in Article II above, unless extended by the Member;
>
> (ii) By the decision of the Board of Managers;
>
> (iii) The sale or other disposition of all or substantially all of the Company assets;
>
> (iv) If the Member shall dissolve or be dissolved or liquidate or be liquidated, except that the Company shall not dissolve upon a wholly voluntary dissolution or liquidation of the Member to the extent permitted under the Act.
>
> Section 10.2 Winding Up, Liquidation and Distribution of Assets. Upon dissolution, an examination shall be made by the Company's accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the

> last accounting through the date of dissolution. The Member shall immediately proceed to wind up the affairs of the Company and dissolve the Company.

Applicant Ex. E, §§ 10.1 – 10.2.

21. Holdings leases the property to PCCS pursuant to a written lease. Applicant Ex. C (copy of lease, dated June 16, 2004 (Lease)).

22. The Lease provides, in pertinent part:

> I. GRANT, TERM, DEFINITIONS AND BASIC LEASE PROVISIONS
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> 1.0. Grant. Landlord [Holdings] for and in consideration of the rents herein reserved and of the covenants and agreements herein contained on the part of Tenant [PCCS] to be performed, hereby leases to Tenant, and Tenant hereby lets from Landlord, the land legally described on Exhibit A attached hereto (the "Real Estate"), together with all buildings and other improvements npow located on the Real Estate and the buildings and other improvements which are to be constructed on the Real Estate, as provided in this Lease (the Improvements") and all other improvements (collectively, the "Leased Premises").
>
> 1.1. Term. The initial term of this Lease shall commence on the date of this Lease (the "Commencement Date") and shall end on December 31, 2028 (the "Termination Date"), unless sooner terminated as herein set forth. The "Term" of this Lease shall mean and refer to the period commencing on the Commencement Date and ending on the Termination Date as the same may be extended in accordance with the terms of this Lease.
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> II. POSSESSION
>
> 2.0. Possession. Tenant shall be granted possession of the Leased Premises as of the Commencement Date.
>
> 2.1. Existing Improvements. Tenant acknowledges that it is leasing the existing buildings and improvements "as is" in their present condition and Landlord has not agreed to make any alteration, modification or improvement to the existing buildings and improvements.
>
> 2.2. New Improvements. Landlord shall cause to be constructed on the Real Estate, the buildings and other improvements that are described in the Plans and Specifications prepared for "Prairie Crossing Charter School" by Prisco Serena Sturm Architects, last revised August 27, 2003 (the "Plans").
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> ***
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> IV. RENT

> 4.0. Annual Base Rent. Beginning with the Commencement Date, Tenant shall pay Annual Base Rent in monthly installment equal to Qualified Debt Service (hereinafter defined) in advance, on or before the first day of each month. Rent shall be paid to or upon the order of Landlord at Landlord's address, or at such other address as Landlord may direct. "Qualified Debt Service" means the regularly scheduled principal and interest payments from time to time due and owing by Landlord on all financing obtained by Landlord to finance the cost of acquiring and constructing the Leased Premises, provided that the terms of such financing have been first approved by Tenant. In addition to the monthly installments of Annual Base Rent, Tenant shall promptly pay when due hereunder all other charges, costs, expenses, installments, rents and other payments of any kind or nature required by the terms of this Lease to be paid by Tenant and all such other charges, costs, expenses, installments, rents and other payments shall be considered "Additional Rent." Annual Base Rent and Annual Rent are sometimes collectively referred to herein as "Rent." Except as may otherwise be expressly provided herein, the obligation to pay Rent is a separate and independent obligation of Tenant. Tenant shall make all payments of Rent promptly when due and without deduction, set-off, discount or abatement of any kind, in lawful money of the United States. Annual Base Rent is intended to be fully net of Additional Rent and no amounts of Additional Rent paid by Tenant shall reduce Tenant's obligations to pay Annual Base Rent. This Lease in intended to be a fully "net" lease and Tenant shall be solely responsible for the payment of all expenses of operating, maintaining and replacing the Improvements.
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> ***

Applicant Ex. C, Arts. I-IV.

23. Some of the other charges, costs, expenses, installments, rents and other payments PCCS makes pursuant to the Lease are for insurance (Applicant Ex. C, Art. V), maintenance, including repairs and/or alterations (*id*., Art. VII), and taxes and utilities (*id*., Art. XII).

24. Pursuant to Holdings' order, PCCS pays the monthly Base Rent, also known as Qualified Debt Service, directly to the mortgagor. Applicant Ex. C, § 4.0; Tr. pp. 48-49 (Helle).

25. Holdings received no net revenues as a result of PCCS's payment of Holdings debt service to the mortgagor. Form 990, p. 1 (Part 1, lines 1-12); Tr. pp. 48-49 (Helle).

Conclusions of Law:

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). One class of property that the legislature may exempt from taxation is "property used exclusively … for school … purposes." Ill. Const. Art. IX, § 6 (1970).

Pursuant to the authority granted under the Illinois Constitution, the General Assembly enacted § 15-35 of the Property Tax Code (PTC), which provides, in relevant part:

> § 15-35. Schools. All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:
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> (a) property of schools which is leased to a municipality to be used for municipal purposes on a not-for-profit basis;
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> (b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities, and school-owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations;
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> (c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely;
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> ***

(e) property owned by a school district. The exemption under this subsection is not affected by any transaction in which, for the purpose of obtaining financing, the school district, directly or indirectly, leases or otherwise transfers the property to another for which or whom property is not exempt and immediately after the lease or transfer enters into a leaseback or other agreement that directly or indirectly gives the school district a right to use, control, and possess the property. In the case of a conveyance of the property, the school district must retain an option to purchase the property at a future date or, within the limitations period for reverters, the property must revert back to the school district.

(1) If the property has been conveyed as described in this subsection, the property is no longer exempt under this Section as of the date when:

(A) the right of the school district to use, control, and possess the property is terminated;

(B) the school district no longer has an option to purchase or otherwise acquire the property; and

(C) there is no provision for a reverter of the property to the school district within the limitations period for reverters.

(2) Pursuant to Sections 15-15 and 15-20 of this Code, the school district shall notify the chief county assessment officer of any transaction under this subsection. The chief county assessment officer shall determine initial and continuing compliance with the requirements of this subsection for tax exemption. Failure to notify the chief county assessment officer of a transaction under this subsection or to otherwise comply with the requirements of Sections 15-15 and 15-20 of this Code shall, in the discretion of the chief county assessment officer, constitute cause to terminate the exemption, notwithstanding any other provision of this Code.

(3) No provision of this subsection shall be construed to affect the obligation of the school district to which an exemption certificate has been issued under this Section from its obligation under Section 15-10 of this Code to file an annual certificate of status or to notify the chief county assessment officer of transfers of interest or other changes in the status of the property as required by this Code.

(4) The changes made by this amendatory Act of the 91st General Assembly are declarative of existing law and shall not be construed as a new enactment; and

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35 **ILCS** 200/15-35.

The Department denied the exemption application here after determining that PCCS "[wa]s not the owner of the property. Applicant is the lessee of the property. No leasehold assessment has been made for the assessment year for which application has been made." Department Ex. 1. There is no claim that the property was not used in an exempt manner. That denial forms the basis for the fundamental issue, which is whether PCCS should be considered the owner of the property, even though Holdings is the actual title-holder. But the parties' closing arguments also suggest another issue, namely, which subsection of PTC § 15-35 should apply here.

PCCS asserts that it meets the criteria for exemption under either the initial paragraph, or subsection (c), of PTC § 15-35. Tr. pp. 59-62 (closing argument). It cites Association of American Medical Colleges v. Lorenz, 17 Ill. 2d 125, 160 N.E.2d 763 (1959) for the proposition that exemption does not depend on the fact that the owner of the property is the school that is actually using the property. Tr. pp. 59-60. It contends that the property at issue here should be considered its property, that is, the property "of a school," since PCCS is the sole member, and thus, the 100% owner of the title-holder of the property, and since it created Holdings expressly for the purpose of holding title to the property. Tr. pp. 61-62.

In response, the Department argues that subsection (e) applies here. Specifically, after counsel for PCCS argued that "The statute under Subparagraph E is what the Illinois Department of Revenue wants us to be limited to, and that refers and allows an exemption for property owned by a school district" (Tr. p. 60), counsel for the Department responded, "Counsel [for Applicant] has made some of my argument, Mr. White. He cited the provision in the code which the Department is relying on." Tr. p. 64.

Thus, the second issue suggested by the parties' arguments is whether this matter involves property "of [a] school[ ]" (35 **ILCS** 200/15-35 (introductory paragraph and subsection (b)), or whether it is "property owned by a school district[.]"35 **ILCS** 200/15-35(e).

On this question, the documentary evidence consistently and expressly identifies PCCS as a school, and not as a school district. Department Exs. 1-2; Applicant Exs. F, J-N. Specifically, the original and renewed charters issued by the Illinois Board of Education (IBOE) to PCCS do not identify or refer to PCCS as a school district. Applicant Exs. J-N. Illinois law is clear that school districts are governmental agencies created by the legislature and subject to its will. Cronin v. Lindberg, 66 Ill. 2d 47, 55, 360 N.E.2d 424, 427 (1976). There is no documentary evidence in this record to show that the Illinois General Assembly created PCCS to be such an agency. Subsection 15-35(e), therefore, does not apply to this dispute.

In Wheaton College v. Department of Revenue, 155 Ill.App.3d 945, 508 N.E.2d 1136 (2nd Dist. 1987), the court set forth the following description of the incidents of ownership test:

> *** [O]wnership of real estate is a broad concept and can apply to one other than the record titleholder. (*Mason v. Rosewell* (1982), 107 Ill.App.3d 943, 946, 63 Ill.Dec. 722, 438 N.E.2d 653.) Title refers only to a legal relationship, while ownership is comparable to control. (*People v. Chicago Title & Trust Co.* (1979), 75 Ill.2d 479, 489, 27 Ill.Dec. 476, 389 N.E.2d 540.) The term "owner" may include one who has the control or occupation of land with a claim of ownership. (75 Ill.2d 479, 489, 27 Ill.Dec. 476, 389 N.E.2d 540.) The meaning of the term "owner" depends upon the nature and purpose of the statute involved. (*Chapman v. County of Will* (1973), 55 Ill.2d 524, 531, 304 N.E.2d 287.) The primary incidents of ownership include the right to possession, use and enjoyment of the property, the right to change or improve the property, and the right to alienate the property at will. 73 C.J.S.

Property § 27 (1983).

Wheaton College, 155 Ill. App. 3d at 946, 508 N.E.2d 1137.

Here, PCCS, the applicant, is a non-profit, board-certified, public, charter school. Applicant Exs. J, L, N. PCCS operates its public school on the property, and the property is used exclusively for that purpose. Department Ex. 2; Applicant Ex. E, § 2.1. PCCS is the sole member of Holdings, an Illinois LLC. Applicant Ex. E, ¶ 1. PCCS created Holdings to hold title to the property on which it operates its public school. Applicant Ex. E, Art. III. One of Holdings' managers, Helle, and Fay, PCCS's treasurer, each testified that PCCS created Holdings to hold title to the property at the insistence of the bank that lent PCCS the money to purchase and further develop the school property. Tr. pp. 46-47, 51 (Helle), 56-58 (Fay). Helle testified further that the bank explained that it wanted PCCS to create Holdings because, in event of default, it did not want to be in the position of having to foreclose on a public school. Tr. pp. 46-47, 51 (Helle). Fay testified that the bank that asked PCCS to create Holdings was the only lending institution that would finance its purchase of the school property. Tr. pp. 56-57 (Fay).

Halle's and Fay's testimony as to the reason why PCCS created and transferred ownership of the property to Holdings, and then entered into the leaseback of the property with it was clear, credible and closely associated with the books and records PCCS offered into evidence. Specifically, their testimony was corroborated by documents showing that the bank consented to have Holdings, a brand new LLC that was first organized in June 2004, step into PCCS's shoes vis-à-vis the various contracts the bank had previously negotiated with PCCS — namely, the Purchase Agreement, Loan

Agreement, and the Construction Contract — and which PCCS's board had previously approved on May 18, 2004. Applicant Ex. E, Resolution.

Viewed against that factual background, I now address whether the Lease grants to PCCS the primary incidents of ownership over the property. First, the Lease grants PCCS actual possession of the property on which it operates its school. Applicant Ex. C, Art. II; Wheaton College, 155 Ill. App. 3d at 946, 508 N.E.2d 1137. Further, the Lease does not set forth a sum certain amount of rent, as might be expected in an ordinary commercial lease. Instead, the Lease defines monthly Base Rent, in substance, as the monthly principal and interest that Holdings owes on the property, and Additional Rent as, *e.g.*, the taxes that may be imposed on the property, and such other other costs that are ordinarily associated with the ownership and maintenance of property. Applicant Ex. C, Arts. IV-VI, VIII, XII. In short, PCCS's "rent" was equal to its wholly-owned title-holder's monthly mortgage on the property, plus whatever other costs were associated with operating PCCS's school on the property. Such an express rent structure makes clear that the Lease was not one that was designed to provide, nor did it actually provide, profit — or even any net revenues — to Holdings. *Id*.; Form 990, p. 1 (Part 1, lines 1-12, sources of revenues).

And while the Lease's terms reflect that PCCS may not, without Holdings' consent, materially alter or improve the property, or assign or sublet any of its possessory interest in the property, I must also acknowledge that, since PCCS is the sole member of Holdings, PCCS controls Holdings. In other words, in this particular situation, the tenant actually controls all of the actions of the landlord, including the landlord's putative control over its consent to any improvement or assignment that the tenant might wish to make to the property. This is not ordinarily the case in a lease between two distinct, unrelated entities. Cole Hosp., Inc. v. Champaign County Bd. of Review, 113 Ill. App. 3d 96, 100, 446 N.E.2d 562, 565 (4th Dist. 1983) ("Obviously not every lease *qua* lease will qualify for exemption."); *accord* Bd. of Educ. of Glen Ellyn Comm. Consolidated School Dist. No. 89 v. Department of Revenue, 356 Ill. App. 3d 165, 825 N.E.2d 746 (2d Dist. 2005).

Finally, and even though the Lease itself does not include a provision granting the tenant the option to purchase the property, ownership of the property will inevitably revert back to PCCS pursuant to the terms of Holdings' Operating Agreement, either once Holdings' duration expires, or when it is dissolved. Applicant E, §§ 2.5, 10.1-10.2; Henderson Co. Retirement Center, Inc. v. Department of Revenue, 237 Ill. App. 3d 522, 604 N.E.2d 1003 (3rd Dist. 1992) ("the right to choose when and if property may be transferred is the single most significant incident of real estate ownership."). As the sole member of Holdings, PCCS was the entity that drafted that Operating Agreement. Applicant Ex. E, pp. 1 ("The Member, desiring to form a limited liability company pursuant to the Illinois Limited Liability Company Act for the purposes set forth below and upon the terms and conditions set forth below, hereby agrees as follows:"), 10 ("In Witness Whereof, the Member has made this Agreement effective of the day and year first above written."). PCCS, therefore, controlled, and continues to control, when ownership of the property shall revert to it, or whether the property might be sold outright to another entity. Applicant E, §§ 2.5, 10.1-10.2.

Conclusion:

I conclude that PCCS has established that the primary incidents of ownership over the property, and that Holdings is a mere-title holder. Therefore, I recommend that the Director cancel the Department's prior denial of PCCS's exemption application, and that the property having the PIN of 06-36-409-003 be granted an exemption from Illinois property tax for all of 2005.

March 13, 2007
Date   John E. White, Administrative Law Judge